

FILED

NOV 05 2010

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.

STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

PASADO'S SAFE HAVEN, a
Washington non-profit corporation,

Defendant.

NO. 10 2 09124 4

CONSENT DECREE

I. JUDGMENT SUMMARY

1.1 Judgment Creditor: State of Washington

1.2 Judgment Debtor: Pasado's Safe Haven

1.3 Principal Judgment Amount:

Costs and Attorneys' Fees : \$70,000

1.4 Total Judgment: \$70,000

1.5 Attorney for Judgment Creditor: Shannon E. Smith
Assistant Attorney General

1.6 Attorney for Judgment Debtor: John F. Jenkel
Forsberg & Umlauf, P.S.

Plaintiff, State of Washington, commenced this action pursuant to the Charitable Solicitations Act, RCW 19.09 and the Consumer Protection Act, RCW 19.86;

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1 Defendant, Pasado's Safe Haven, was served with a Summons and Complaint or waived
2 service;

3 Plaintiff appears by and through its attorneys, Robert M. McKenna, Attorney General, and
4 Shannon E. Smith, Assistant Attorney General;

5 Defendant appears by and through its attorneys, John F. Jenkel and Forsberg & Umlauf,
6 P.S.;

7 Plaintiff and Defendant agree on a basis for the settlement of the matters alleged in the
8 Complaint and to the entry of this Consent Decree against Defendant without the need for trial or
9 adjudication of any issue of law or fact. Defendant specifically and categorically denies all
10 allegations of wrongdoing;

11 Plaintiff and Defendant agree that this Consent Decree does not constitute evidence or an
12 admission regarding the existence or non-existence of any issue, fact, or violation of any law
13 alleged by Plaintiff;

14 Defendant recognizes and states that this Consent Decree is entered into voluntarily and
15 that no promises or threats have been made by the Attorney General's Office or any member,
16 officer, agent, or representative thereof to induce Defendant to enter into this Consent Decree,
17 except as provided herein;

18 Defendant waives any right it may have to appeal from this Consent Decree;

19 Defendant further agrees that it will not oppose the entry of this Consent Decree on the
20 grounds the Consent Decree fails to comply with Rule 65(d) of the Rules of Civil Procedure, and
21 hereby waives any objections based thereon;

22 The parties agree that this Court shall retain jurisdiction of this action for the purpose of
23 implementing and enforcing the terms and conditions of the Consent Decree and for all other
24 purposes; and

25 The Court finds no just reason for delay.
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1 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as
2 follows:

3 **II. GENERAL**

4 2.1 Jurisdiction. This Court has jurisdiction over the subject matter of this action and
5 over the parties. Plaintiff's Complaint in this matter states claims upon which relief may be
6 granted under the provisions of the Charitable Solicitations Act, RCW 19.09 and the Consumer
7 Protection Act, RCW 19.86.

8 2.2 Defendant. For purposes of this Consent Decree, the term "Defendant" where
9 not otherwise specified shall mean Pasado's Safe Haven ("PSH").

10 **III. INJUNCTIONS**

11 3.1 Application of Injunctions. The injunctive provisions of this Consent Decree shall
12 apply to Defendant and Defendant's successors, assigns, officers, agents, servants, employees,
13 representatives, and all other persons or entities in active concert or participation with Defendant.

14 3.2 Notice. Within five (5) business days of entry of this Decree, Defendant shall
15 inform and give actual notice of this Consent Decree to all Board Members; and to those
16 employees and volunteers who are charged with performing any act or task required herein.

17 3.3 Injunctions. Defendant and its successors, assigns, transferees, officers, agents,
18 servants, employees, representatives, and all other persons or entities in active concert or
19 participation with Defendant are hereby permanently enjoined and restrained from directly or
20 indirectly engaging in the following acts or practices:

21 3.3.1 In soliciting charitable contributions, PSH (or any organization or entity
22 soliciting on its behalf) shall not misrepresent to donors or prospective donors directly or by
23 implication that the contributions will be applied to a particular purpose or use, or used for the
24 benefit of a specific animal(s), unless all of the donated funds are kept segregated in separate
25 accounts to be put to the represented purpose or use, and used for the benefit of the specific
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1 animal(s). This includes solicitations for sponsorship, care, or adoption of specific animals.
2 Nothing in this provision shall be construed to prohibit PSH from applying a reasonable
3 portion of donated funds to administrative services, or to apply excess proceeds to another
4 similar use where notice of the right to apply funds to another similar use is properly given;

5 3.3.2 In soliciting charitable contributions, PSH (or any organization or entity
6 soliciting on its behalf) shall not misrepresent to donors or potential donors directly or by
7 implication that contributions will be used in response to a specified event (e.g. natural
8 disaster, rescue operation, etc.) unless all of the donated funds are kept segregated in separate
9 accounts to be used in response to the event and used in response to the event. Nothing in this
10 provision shall be construed to prohibit PSH from applying a reasonable portion of donated
11 funds to administrative services, or to apply excess proceeds to another similar use where
12 notice of the right to apply funds to another similar use is properly given;

13 3.3.3 In soliciting charitable contributions, PSH (or any organization or entity
14 soliciting on its behalf) shall not misrepresent to donors or potential donors directly or by
15 implication the nature or extent of PSH's response to a natural disaster or other event, or the
16 qualifications or expertise of PSH and its staff or volunteers to participate in disaster relief or
17 other response efforts.

18 3.3.4 In soliciting charitable contributions, PSH (or any organization or entity
19 soliciting on its behalf) shall not misrepresent to donors or potential donors directly or by
20 implication that it will use donated funds to provide care for animals at its sanctuary unless
21 PSH devotes the donated funds to provide adequate staff and resources (including contractors
22 and third parties) to provide the level of care represented;

23 3.3.5 If PSH solicits charitable contributions for capital projects (e.g. barns,
24 habitats, etc.) or the purchase of real estate, PSH must have a Board-approved plan for
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1 developing the project or purchasing the real estate and shall use its best efforts to expend the
2 funds for the intended purposes within a reasonable period of time;

3 3.3.6 Pasado's Safe Haven shall not solicit charitable donations unless it is
4 currently registered as a charitable organization with the Washington Secretary of State;

5 3.3.7 Pasado's Safe Haven shall implement adequate financial controls
6 including but not limited to prohibiting staff members or other individuals from using Pasado's
7 Safe Haven's financial resources for personal use, including but not limited to credit card
8 accounts or bank accounts, even if the use is temporary and the staff member reimburses or
9 intends to reimburse Pasado's Safe Haven;

10 3.3.8 No less than every third year of operation Pasado's Safe Haven shall
11 obtain a financial audit by a certified public accountant and the accountant shall provide a copy
12 of the audit to Pasado's Safe Haven and, upon the request of the Attorney General's Office, to
13 the Attorney General's Office (Attn: Shannon E. Smith, Assistant Attorney General, 800 5th
14 Ave., Ste. 2000, Seattle, WA 98104-3188);

15 3.3.9 Pasado's Safe Haven shall not appoint Susan Michaels to the Board of
16 Directors nor will it employ her in any executive management position within the organization;

17 3.3.10 PSH shall provide governance training to all Board members within one
18 year of the date of this decree and not less than every third year hereafter, by contracting with a
19 qualified nonprofit support organization as mutually agreed upon by PSH and the State, within
20 90 days of the entry of this Consent Decree, or as soon thereafter as practicable upon mutual
21 agreement of the parties. PSH shall provide such mutually agreeable governance training to
22 each new member of the Board of Directors within one year of the member's appointment of
23 the board;

24 3.3.11 In addition to the training set forth in paragraph 3.3.10, PSH shall
25 provide governance training to its Chief Executive Officer (CEO) and to its Chief Operations
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1 Officer (COO) by requiring the CEO and the COO to attend the Cascade Nonprofit Executive
2 Leadership Institute, or a comparable nonprofit executive management training course as
3 mutually agreed upon by PSH and the State. The CEO and the COO shall attend the training
4 within 12 months of the entry of this Consent Decree, or as soon thereafter as practicable upon
5 mutual agreement of the parties. PSH shall provide such mutually agreeable nonprofit
6 executive training course to each new CEO or COO within one year of hiring.

7 IV. ATTORNEY COSTS AND FEES

8 4.1 Pursuant to RCW 19.86.080, Plaintiff shall recover and Defendant shall pay the
9 costs and reasonable attorneys' fees incurred by Plaintiff in pursuing this matter in the amount of
10 seventy thousand dollars (\$70,000).

11 4.2 Payment owing under this provision shall be in the form of a valid check paid to
12 the order of the "Attorney General—State of Washington" and shall be due and owing within
13 thirty (30) days of the entry of the Consent Decree. Payment shall be sent to the Office of the
14 Attorney General, Attention: Cynthia Lockridge, Administrative Office Manager, 800 Fifth
15 Avenue, Suite 2000, Seattle, Washington 98104-3188.

16 V. ENFORCEMENT

17 5.1 Violation of any of the injunctions contained in this Consent Decree shall subject
18 Defendant to a civil penalty of up to \$25,000 per violation pursuant to RCW 19.86.140.

19 5.2 In any action to enforce the terms of this Decree, the Plaintiff may seek additional
20 remedies, including but not limited to restitution, injunctive relief, civil penalties, in addition to
21 any other remedies permitted by law. The prevailing party may request recovery of costs and
22 attorneys' fees to the extent provided by law.

23 5.3 This Consent Decree is entered pursuant to RCW 19.86.080. Jurisdiction is
24 retained for the purpose of enabling any party to this Consent Decree with or without the prior
25 consent of the other party to apply to the Court at any time for enforcement of compliance with
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1 this Consent Decree, to punish violations thereof, or to modify, clarify, or declare rights under
2 this Consent Decree. Defendant may, after three years from the date of issuance of this document,
3 petition this Court for a release from or modification of any requirement herein. Such a petition
4 will not subject the Defendant to liability for attorney fees absent a showing of bad faith.
5 Provided further, if any provision of this Consent Decree directly conflicts with, or makes it
6 impossible to comply with, a provision of any subsequent order lawfully issued by another
7 court of competent jurisdiction, either party may petition this Court, with notice and
8 opportunity to be heard afforded to the opposing party, for modification of the Consent Decree;
9 each party shall bear its own costs in any proceeding to determine whether there is a conflict or
10 impossibility between the Consent Decree and any subsequent order.

11 5.4 Representatives of the Office of the Attorney General are permitted to access,
12 inspect, and/or copy all business records or documents under control of Defendant in order to
13 monitor compliance with this Consent Decree after (10) business days' written notice to
14 Defendant, provided that the inspection and copying shall be done in such a way as to avoid
15 disruption of Defendant's business activities. Failure to comply with this section will be
16 considered a violation of the terms of this Consent Decree.

17 5.5 Representatives of the Office of the Attorney General are permitted to question, in
18 person or by written interrogatory, any officer, director, agent, employee, or volunteer of
19 Defendant in order to monitor compliance with this Consent Decree after 10 business days'
20 written notice to Defendant, provided that the questioning shall be done in such a way as to avoid
21 disruption of Defendant's business activities. Failure to comply with this section will be
22 considered a violation of the terms of this Consent Decree.

23 5.6 Nothing in this Consent Decree shall be construed as to limit or bar any other
24 governmental entity or consumer from pursuing other available remedies against Defendant.
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1 5.7 Under no circumstances shall this Consent Decree or the name of the State of
2 Washington, the Office of the Attorney General, Consumer Protection Division, or any of their
3 employees or representatives be used by Defendants in connection with any selling, advertising,
4 or promotion of products or services or as an endorsement or approval of Defendant's acts,
5 practices, or conduct of business.

6 5.8 This Consent Decree resolves with prejudice all issues raised by the Attorney
7 General under the Charitable Solicitation Act and the Consumer Protection Act pertaining to the
8 acts or omissions addressed in the Complaint filed in this matter that may have occurred before
9 the date of the entry of this Consent Decree.

10 **VI. DISMISSAL AND WAIVER OF CLAIMS**

11 6.1 Upon entry of this Consent Decree, all claims in this matter not otherwise
12 addressed by this Consent Decree are dismissed.

13 DONE IN OPEN COURT this ____ day of NOV 05 2010, 2010.

14
15 SUSAN C. GAER
16 COURT COMMISSIONER

17 _____
18 JUDGE/COURT COMMISSIONER

19 Approved for entry and presented by:

20 ROBERT M. MCKENNA
21 Attorney General

22 _____
23 SHANNON E. SMITH
24 WSBA #19077
25 Assistant Attorney General
26 Attorneys for Plaintiff
 State of Washington

 Approved for Entry, Notice of
 Presentation Waived:

 PASADO'S SAFE HAVEN
 Defendant

 By: ELIZABETH DRUIN
 BOARD CHAIR

 JOHN F. JENKEL
 WSBA #16085
 Forsberg & Umlauf P.S.
 Attorneys for Defendant